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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF C.F. AND NAKKAI FURKIN,	)	
NAKKAI FURKIN,	)	
Appellant-Respondent,	)	
vs.	)	No. 03A05-0704-JV-204
BARTHOLOMEW COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE BARTHOLOMEW CIRCUIT COURT
The Honorable Stephen R. Heimann, Judge
Cause No. 03C01-0505-JT-1011

May 22, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Nakkai Furkin ("Mother") appeals the trial court's involuntary termination of her parental rights to her daughter, C.F. Mother raises two issues for appeal, which we revise and restate as:

I. Whether Mother's due process rights were violated when the trial court did not issue the order terminating her parental until eight months after holding the fact-finding hearing; and

II. Whether the evidence was sufficient to terminate Mother's parental rights.

We affirm.

The relevant facts follow. C.F. was born on April 12, 1997.[1] Mary Canady, an investigator for the Bartholomew County Office of Family and Children ("BCOFC"), received two reports regarding Mother's lack of supervision of six-year-old C.F. and possible drug use by Mother. Canady's initial contact with Mother was in 2002, "regarding allegations of not supervising the children." Transcript at 78. At that time, Mother was referred to Early Interventions, and Canady recommended counseling along with support for the family in the home. Mother was uncooperative and did not participate in counseling. However, Lisa York[2] moved in with Mother and her family, and Canady believed that this made Mother's home a safe place for the children to remain.

In early February 2004, the BCOFC initiated an investigation after Canady received a call that York had moved out after a fight between York and Mother regarding

[1] Christopher Mullins ("Father") is C.F.'s natural father but is not involved in this appeal.
[2] Lisa York is Furkin's mother.

Mother's drug use and lack of supervision of the children. On February 5, 2004, the BCOFC received a call from C.F.'s school that C.F. "had not been in school for a couple of days and that they had . . . they were having growing concerns." Id. On, February 11, 2004, the BCOFC received another report that C.F. was not in school and Canady asked the Bartholomew County Sheriff's Department to conduct a welfare check on C.F.

Upon arriving at Mother's residence, the Deputy found Mother sleeping and C.F. was not there and could not be located. Mother was not sure of C.F.'s whereabouts. C.F. was eventually located at a neighbor's home, and C.F. told the Deputy that she had been "kicked out" of Mother's home. Petitioner's Trial Exhibit at 1. The Deputy "had concerns that [Mother] and the person that was staying with her, a male, [were] under the influence." Transcript at 79. The Deputy contacted Canady, and C.F. was taken into custody. Allegations of lack of supervision were substantiated and, following drug testing and drug assessment, Mother tested positive for methamphetamine and other drugs. C.F. was adjudicated a CHINS in April of 2004 and placed in foster care.

Canady set up visitation for Mother with C.F., but Mother only visited C.F. on one occasion for an hour and a half and advised another BCOFC investigator that she was not going to contact or work with Canady. The case was thereafter transferred to an ongoing case manager, Carol Gwin, in April 2004.

The trial court entered a dispositional decree, which required Mother to:

> (1) Cooperate with Bartholomew County Office of Family and Children and its representatives;
> (2) Actively participate in the development of the Case Plan;
> (3) Maintain consistent contact with Family Case Manager and report any household changes;

(4) Adhere to and participate in the visitation plan;
(5) Demonstrate appropriate parenting skills during visits;
(6) Obtain and maintain adequate housing;
(7) Obtain and maintain suitable employment or source of income;
(8) Attend, participate in and successfully complete individual counseling (home-based or outpatient);
(9) Attend, participate in and successfully complete psychiatric evaluation to identify necessary issues and services;
(10) Contact a physician to confirm any medical condition that [Mother] has which would interfere with her ability to care for [C.F.];
(11) [Mother] would not allow suspected felons, drug dealers, users and other disreputable in persons in her home and around [C.F.]
(12) Attend, participate in and successfully complete group-based parenting classes;
(13) Abide by the laws of the State of Indiana and the United States of America;
(14) Abide by all the terms and conditions established by the Bartholomew County Probation for [Mother];
(15) Do not use any drugs or alcohol except to the extent prescribed by a licensed medical physician;
(16) Successfully complete drug use assessment and abide by the recommendations; and
(17) Successfully complete drug screens.

Petitioner's Trial Exhibhit at 11-14.

Supervised visits were scheduled for once per week, and Mother often arrived late. Mother also missed visits and did not contact the BCOFC to let them know.[3] However, the visits that did occur "went fairly well." Id. at 21. Mother was offered family counseling with C.F. and a Debra Corn Agency therapist, but this never occurred due to Mother's lack of transportation. In August 2005, the BCOFC requested that Mother submit to a drug screen and hair follicle test before any further visits would occur.

[3] Chris Guthrie of the Debra Corn Agency also sometimes supervised Mother's visits with C.F., and Mother failed to notify this agency as well when she was going to miss a scheduled visitation.

Mother refused to submit to a hair follicle test. Thus, no visitation occurred after this refusal.

Gwin arranged a psychological evaluation for Mother, which was scheduled several times before Mother completed it on August 18, 2004. The psychological evaluation recommended that Mother receive therapeutic counseling and consult with a psychiatrist for possible medication to address Mother's symptoms of social anxiety and paranoia. Gwin made an individual counseling referral to Pat Corbin of Family Service of Bartholomew County for Mother. Mother's initial intake with Corbin was on September 23, 2004, and the last time Mother was seen by Corbin was April 4, 2005. However, Corbin deemed the counseling unsuccessful due to lack of the necessary follow-up by Mother to establish a case plan, and Corbin closed the case.

Mother was to meet with a psychiatrist on August 1, 2005, but the appointment was rescheduled by the doctor's office. Mother met with the psychiatrist on August 3, 2005, but failed to return the following day for completion of the assessment. Two additional appointments were set up, but Mother failed to keep these appointments.

Gwin referred Mother to Rebecca Williams of The Homebuilders Program in March of 2005. Williams's goals included helping Mother to complete the recommended medical evaluations and drug assessments and to assist Mother in finding a suitable home and employment or obtaining social security benefits. Williams was available to work with Mother five days per week and had a standing appointment with Mother daily. Mother missed six appointments in March, seven appointments in April, eleven appointments in May, seven appointments in June, six appointments in July, four

appointments in August, and twelve appointments in September. Williams closed Mother's case in September 2005, and determined that Mother failed to complete the program successfully.

Mother continued to use drugs throughout the time that C.F. was a ward of the State. The BCOFC referred Mother to Toxicology One for a drug assessment. Mother attended sessions with Brenda Harris, a counselor at Toxicology One, on March 30, 2005, June 14, 2005, and August 3, 2005. Per a request by the BCOFC, Harris conducted drug testing on Mother, and a March 18, 2005, hair follicle test was positive for methamphetamine; a June 15, 2005, urine screen tested positive for amphetamine and methamphetamine; an August 3, 2005, urine screen was negative; and, on August 3, 2005, Mother refused a hair follicle test. Harris was unable to complete the drug assessment because Mother did not return.

C.F. was removed from foster care and placed at Fresh Start in June 2005, because "her behaviors just seemed to keep escalating in the foster home." Transcript at 30. Fresh Start initiated family therapy with Mother and C.F. to help C.F. deal with her issues regarding the situation with her mother on June 8, 2005. Mother only attended three sessions. Other sessions were scheduled, but Mother would either call in, not show up, or show up too late for the session to occur.

On May 27, 2005, the BCOFC filed a Petition to Terminate Parent-Child Relationship. In October 2005, Mother was arrested and charged with forgery, counterfeiting, and drug possession. She remained in jail at the time of the February hearing. A fact-finding hearing was held on February 7-8, 2006, and the trial court took

the matter under advisement. On October 26, 2006, the trial court entered its findings of fact and conclusions thereon terminating Mother's parental rights.

The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). However, these parental interests are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights. Id. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. Id. The purpose of terminating parental rights is not to punish parents, but to protect children. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), reh'g denied, trans. denied.

I. Due Process Violation

The first issue is whether Mother's due process rights were violated when the trial court did not issue the order terminating her parental rights until eight months after holding the fact finding hearing. Mother argues that the trial court "considered evidence that 'educated the court on [Mother's] past failings but did not speak to her present ability to properly care for her children.'" Appellant's Brief at 9 (citation omitted). Specifically, Mother argues that her right to due process was violated because the termination order was based upon evidence existing at the time of the hearing in February 2006, rather than evidence existing at the time of the order in October 2006. We disagree.

When the State seeks to terminate the parent-child relationship, it must do so in a manner that meets the requirements of due process. J.T. v. Marion County Office of Family & Children, 740 N.E.2d 1261, 1264 (Ind. Ct. App. 2000), reh'g denied, trans. denied. Due process embodies the requirement of fundamental fairness. E.P. v. Marion County Office of Family & Children, 653 N.E.2d 1026, 1031 (Ind. Ct. App. 1995). The three factors to consider with regard to due process in termination matters are the private interests affected by the proceeding, the risk of error created by the State's chosen procedure, and the countervailing governmental interest supporting use of the challenged procedure. A.P. v. Porter County Office of Family & Children, 734 N.E.2d 1107, 1112 (Ind. Ct. App. 2000), reh'g denied, trans. denied.

Ind. Trial Rule 53.2 governs the timing for holding an issue under advisement and provides:

> (A) **Time Limitation for holding issue under advisement.** Whenever a cause (including for this purpose a petition for post conviction relief) has been tried to the court and taken under advisement by the judge, and the judge fails to determine any issue of law or fact within ninety (90) days, the submission of all the pending issues and the cause may be withdrawn from the trial judge and transferred to the Supreme Court for the appointment of a special judge.
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> * * * * *

The purpose of this rule is to expedite litigation. Weber v. Electrostatic Eng'g, 465 N.E.2d 1152, 1154 (Ind. Ct. App. 1984). However, this court has determined that if a party does not follow the procedure set forth in the aforementioned rule and permits the case to proceed to final judgment, that party is estopped from complaining that the

presiding trial court judge retained jurisdiction over the case. Phares v. State, 796 N.E.2d 305, 308 (Ind. Ct. App. 2003).

Here, Mother never filed a motion seeking an expedited ruling from the trial court. Rather, she waited until after an adverse judgment was rendered before complaining about a delay. Thus, Mother waived this argument. See, e.g., Preston v. Hammond, 153 Ind. App. 447, 287 N.E.2d 774, 775 (1972) (holding that a party who did not properly initiate proceedings to withdraw submission of issues from trial judge after 90-day period but who waited until after judgment and raised the issue for the first time as an alleged error in his motion to correct errors, would be deemed to have waived that error and was estopped from raising it as an alleged error on appeal). Waiver notwithstanding, we note that the petition to terminate Mother's parental rights as to C.F. was filed on May 27, 2005. Mother was given notice of the proceedings, she had counsel in the matter, she was able to participate in the trial by offering exhibits and testimony on her own behalf, and she also had the opportunity to cross examine witnesses. Although Mother argues that her rights were violated because the trial court, at the time it entered the termination order, had no knowledge of facts occurring after the fact-finding hearing on February 7-8, 2006, it is well established that the trial court must look at the parent's fitness at the time of the termination hearing. Matter of L.V.N., 799 N.E.2d 63, 69 (Ind. Ct. App. 2003). Moreover, the trial court must examine the parent's pattern of conduct to determine whether there is substantial probability of future neglect or deprivation. Matter of A.N.J., 690 N.E.2d 716, 721 (Ind. Ct. App. 1997). Also, it is proper for a trial court to consider evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect,

failure to provide support, and lack of adequate housing and employment. In re D.G., 702 N.E.2d 777, 799 (Ind. Ct. App. 1998).

Here, the trial court's ruling was based on the facts as they existed on February 7-8, 2006, which complies with the standard provided by this court. See Matter of L.V.N., 799 N.E.2d at 69. Therefore, we conclude that the trial court did not violate Mother's due process rights.

II. Sufficiency of the Evidence

Mother also argues that the evidence was insufficient to support the trial court's order terminating her parent-child relationship with C.F. Specifically, Mother argues that the evidence on which the termination was based is too old and "too many things in Mother's life may have changed." Appellant's Brief at 24.

When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. Bester, 839 N.E.2d at 147. We will consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. Id. Here, the trial court made findings in granting the termination of Mother's parental rights. When reviewing findings of fact and conclusions thereon entered in a case involving a termination of parental rights, we apply a two-tiered standard of review. Id. First, we determine whether the evidence supports the findings. Id. Then, we determine whether the findings support the judgment. Id. The trial court's judgment will be set aside only if they are clearly erroneous. Id. "A judgment is clearly erroneous if the findings do not support the trial court's conclusions or the conclusions do not support the judgment." Id. (citation and internal quotations omitted).

Ind. Code § 31-35-2-8(a) (2004) provides that "if the court finds that the allegations in a petition described in [Ind. Code § 31-35-2-4] are true, the court shall terminate the parent-child relationship." Ind. Code § 31-35-2-4(b)(2) provides that a petition to terminate a parent-child relationship involving a child in need of services must allege that:

> (A) one (1) of the following exists:
>
> > (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
> >
> > (ii) a court has entered a finding under Ind. Code § 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
> >
> > (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
>
> (B) there is a reasonable probability that:
>
> > (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
> >
> > (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
>
> (C) termination is in the best interests of the child; and
>
> (D) there is a satisfactory plan for the care and treatment of the child.

The State must establish these allegations by clear and convincing evidence. Egly v. Blackford County Dep't. of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992); Doe v.

Daviess County Div. of Children & Family Servs., 669 N.E.2d 192, 194 (Ind. Ct. App. 1996), trans. denied.

Though Mother states that her argument is that there was insufficient evidence on which to terminate her parental rights, the crux of her argument appears to be that the evidence on which the termination was based was too old, having been offered eight months before the trial court's judgment in the case. However, this argument fails because, as noted above, see supra Part I, the trial court was required to look at Mother's fitness at the time of the termination hearing. See, e.g., Matter of L.V.N., 799 N.E.2d 63, 69 (Ind. Ct. App. 2003). Moreover, Mother does not dispute that any of the trial court's findings of fact or conclusions of law were erroneous as of the time of the fact-finding hearing.

This court has interpreted Ind. Code § 31-35-2-4 to mean that the trial court should look at the circumstances at the time of the termination hearing in judging a parent's fitness, also taking into consideration evidence of changed conditions. Matter of A.H., 832 N.E.2d 563, 570 (Ind. Ct. App. 2005) (citing J.K.C. v. Fountain County Dep't of Pub. Welfare, 470 N.E.2d 88, 92 (Ind. Ct. App. 1984)). In addition, the trial court must also "evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child." Id. "The trial court need not wait until the child is irreversibly influenced by a deficient lifestyle such that the child's physical, mental and social growth is permanently impaired before terminating the parent-child relationship." Id. "The historic inability to provide adequate housing, stability, and supervision, coupled with the current inability to provide the same, will

support a finding that continuation of the parent-child relationship is contrary to the child's best interests." Id. (citing Carrera v. Allen Co. Office of Family & Children, 758 N.E.2d 592, 594 (Ind. Ct. App. 2001). Moreover, when the evidence shows that the child's emotional and physical development is threatened, termination of the parent-child relationship is appropriate." Id. (citing Egly, 592 N.E.2d at 1234).

Here, prior to C.F.'s removal from Mother's home, there were multiple reports of lack of supervision of six-year-old C.F. and possible drug use by Mother. Following C.F's removal from Mother's home, Mother was referred to a variety of support services to assist her in regaining custody of C.F., including parenting classes, individual and family counseling, medical and drug evaluations, psychiatric evaluation, and assistance with finding appropriate housing and a source of income. However, Mother refused to cooperate with the various agencies or to complete the programs. Moreover, Mother continued to use drugs throughout the time that C.F. was a ward of the state. Mother tested positive for drugs in March and June of 2005, and, though Mother's urine tested negative for drugs in August 2005, she refused to take a hair follicle test.

Further, Mother never obtained stable housing or a source of income as was required under the trial court's dispositional decree. Mother moved between the homes of friends and relatives, and, at one point, she reported that she was sleeping in the restroom at a service station. Mother obtained her own apartment in August of 2005, but had no income to maintain it. During C.F.'s wardship, which was almost two years at the time of the fact-finding hearing, Mother only worked for a short time at Menards and worked for a friend. She applied for Social Security disability benefits but was denied.

In October 2005, Mother went to jail and remained there at the time of the termination hearing.

Mother has a history of neglect of her children. The BCOFC first became involved with Mother in 2002 regarding allegations of not supervising her children. Since being removed from Mother's care, C.F. has exhibited numerous behavioral problems in the foster home and at school. C.F.'s issues worsened when Mother would miss visitation appointments. At the time of the fact-finding hearing, Mother was incarcerated and facing a possible fourteen years in prison and did not know when she would be released. To suggest that C.F.'s life should be placed on hold until Mother is capable of appropriately caring for her goes against all logic in light of Mother's circumstances at the time of the termination hearing and her past inability to overcome her drug problems, mental issues, and lack of stability. Based on the record, we cannot say that the trial court's findings that C.F. has been removed from Mother "for at least six months"; that "the conditions that resulted in [C.F.s] removal or the reasons for placement outside the home of [Mother] will not be remedied; that "the continuation of [Mother's relationship with C.F.] poses a threat to the well-being of [C.F.]; that "termination is in the best interests of [C.F.]; and that "there is a satisfactory plan for the care and treatment of [C.F.] are clearly erroneous. Ind. Code § 31-35-2-4(b)(2) (2004). See, e.g., Matter of Campbell, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (holding that child's life should not be placed on hold where parent had not shown any improvement for two years). In light of this and other evidence in the record, we find that the evidence was sufficient to terminate Mother's parent-child relationship with C.F.

For the foregoing reasons, we affirm the trial court's involuntary termination of Mother's parental rights.

Affirmed.

MAY, J. and BAILEY, J. concur